

REMARKS

In the Office action mailed June 29, 2007, the Examiner identified eleven inventions pursuant to 35 U.S.C. 121 as summarized below. The Examiner also identified claims 1, 8, 9, 37, 41, 43-47 as linking claims.

The requirement is set forth as follows:

- I. Claims 2-5, 7, 12-17 (including linking claims 1, 8, 9, 37, 41, 43-47) drawn to a method for treating a subject having or at risk of developing a cancer by administering an immunostimulatory oligonucleotide, including a non-CpG oligonucleotide and a poly-G nucleic acid and further administering a cancer medicament that is a chemotherapeutic agent, classified in class 514, subclass 44.
- II. Claims 2-5, 10-17, (including linking claims 1, 8, 9, 37, 41, 43-47) drawn to a method for treating a subject having or at risk of developing a cancer by administering an immunostimulatory oligonucleotide, including a non-CpG oligonucleotide and a poly-G nucleic acid and further administering a cancer medicament that is an immunotherapeutic agent, classified in class 514, subclass 44.
- III. Claims 2-5, 12-17 (including linking claims 1, 8, 9, 37, 41, 43-47) drawn to a method for treating a subject having or at risk of developing a cancer by administering an immunostimulatory oligonucleotide, including a non-CpG oligonucleotide and a poly-G nucleic acid and further administering a cancer medicament that is a cancer vaccine, classified in class 514, subclass 44.
- IV. Claims 6, 31 (only to the extent that claim 31 reads on a non-CpG nucleic acid) (including linking claims 1, 8, 9, 37, 41, 43-47) drawn to a method for treating a subject having or at risk of developing a cancer by administering an immunostimulatory oligonucleotide, including a non-CpG oligonucleotide and a poly-G nucleic acid and further administering a cancer medicament that is an hormone therapy, classified in class 514, subclass 44.
- V. Claim 21, drawn to a method of preventing an allergic reaction in a subject receiving a blood transfusion by administering an immunostimulatory nucleic acid, classified in class 514, subclass 44.
- VI. Claim 31 (only to the extent that claim 31 reads on a CpG nucleic acid), drawn to a method of treating a subject having or at risk of developing cancer comprising administering a CpG nucleic acid and a cancer medicament that is a hormone therapy, classified in class 514, subclass 44.
- VII. Claims 36, 38-40, 42, drawn to a device for delivering an immunostimulatory nucleic acid to a subject, classified in class 604,

subclass 890.1.

- VIII. Claims 48-50, drawn to a kit comprising an immunostimulatory oligonucleotide, classified in class 536, subclass 23.1.
- IX. Claims 51-56, 62-69, drawn to a method for treating cancer by administering a ligand for a pattern recognition receptor, classified in class 514, subclass 2.

Claims 57-61, drawn to a method comprising coating a medical device with a composition comprising a ligand for a pattern recognition receptor, classified in class 424, subclass 2.1.

- XI. Claims 70, 71, drawn to a kit comprising a ligand for a pattern recognition receptor, classified in class 530, subclass 300.

In response to the Restriction Requirement and Species Election, Applicant hereby elects the claims of Group I drawn to a method for treating a subject having or at risk of developing a cancer by administering an immunostimulatory oligonucleotide, including a non-CpG oligonucleotide and a poly-G nucleic acid and further administering a cancer medicament that is a chemotherapeutic agent, classified in class 514, subclass 44, with traverse. The traversal is presented on the grounds that Applicant believes that the limitations of claims 10 and 11, which are included in Group II (namely, that the immunostimulatory nucleic acid has a modified backbone, and the modified back bone is a phosphorothioate modified backbone) should not have been excluded from Group I. These limitations represent structural features that contribute to the therapeutic benefit of embodiments of the invention that are not limited to the invention of Group II. Accordingly, Applicant respectfully requests that these claims be included in the Group I claims.

Based on the election of the invention of Group I, Applicant further elects the species of Taxol without traverse as a chemotherapeutic agent, and the species of skin cancer without traverse as a species of cancer, for continued examination. In view of the identification of claims 1, 8, 9, 37, 41, and 43-47 as linking the inventions of Groups I-IV, Applicant also provisionally elects the species of Herceptin without traverse as an immunotherapeutic agent, and the species of peptide antigen vaccines as a cancer vaccine, for continued examination in the event that the linking claims are allowed.

Applicant believes that all of the claims of Group I (claims 2-5, 7, 12-17, and claims 1, 8, 9, 37, 41, 43-47 that were identified by the Examiner as linking claims), and claims 10-11 that Applicant requests be included in Group I, encompass the elected invention and the elected species.

Having made this election, Applicant expressly reserves the right to file one or more divisional or continuation applications on the subject matter of the nonelected claims.

However, Applicant acknowledges the Examiner's indication that upon the allowance of a generic claim, the claims to non-elected species will be searched and examined.

If the filing of any paper in this application necessitates an extension of time under 37 CFR §1.136(a), the applicant hereby requests such extension of time. If the fee due is in an amount different from any enclosed check or if no check is enclosed, the Commissioner is hereby authorized to charge any deficiency or credit any overpayment to Deposit Account No. 23/2825.

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Respectfully submitted,

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